

RECEIPT # \_\_\_\_\_  
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 BY DPT. CLK. 7-2-04  
 DATE

**UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF MASSACHUSETTS**

SCOTSDALE INSURANCE COMPANY,) )  
 )  
 Plaintiff, )  
 v. )  
 )  
 SUFFOLK CONSTRUCTION )  
 COMPANY, INC. and )  
 CANATAL INDUSTRIES, INC., )  
 )  
 Defendants. )

Civil Action No.

**04 - 11507 RGS**

MAGISTRATE JUDGE Callings

**COMPLAINT**

**Introduction**

In this action, plaintiff, Scottsdale Insurance Company ("SIC") seeks a declaration pursuant to 28 U.S.C. § 2201 of its rights and obligations, if any, to Suffolk Construction Company ("Suffolk") and Canatal Industries, Inc. ("Canatal") under a general liability insurance policy which it issued to Red Oak Corporation ("Red Oak"). Specifically, SIC seeks a declaration that it has no obligation to defend or indemnify Suffolk against any claims for bodily injury by Kevin Sheehan and Deborah Sheehan in an action captioned Sheehan v. Suffolk Construction Company, Inc. and East Coast Fire Proofing, Inc. v. Canatal Industries, Inc. and Red Oak Corporation, Suffolk County Superior Court C.A. No. 01-0503F (the "Sheehan Action"). SIC further seeks a declaration that it has no obligation to defend Canatal in the Sheehan Action, and that any obligation it has to provide indemnity coverage to Canatal is not triggered until and unless Canatal exhausts its \$1 million coverage under its primary commercial general liability insurance policy.

### **Parties**

1. Plaintiff SIC is a corporation organized and existing under the laws of the state of Ohio, having its principal place of business in Scottsdale, Arizona. SIC is, and at all relevant times was, authorized to transact business in Massachusetts.

2. Defendant Suffolk is a corporation organized and existing under the laws of Massachusetts, having its principal place of business in Boston, Massachusetts.

3. Defendant Canatal is, upon information and belief, a corporation organized and existing under the laws of Quebec, Canada and having its principal place of business in Quebec, Canada. Canatal was, at all relevant times herein, transacting business in Massachusetts.

### **Venues**

4. This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. § 1332 as the amount in controversy, exclusive of interest and costs, exceeds Seventy-Five Thousand (\$75,000.00) Dollars and there is complete diversity of citizenship between the plaintiff and all of the defendants.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) as one of the defendants resides within the district and a substantial part of the events and omissions that give rise to the subject of this action are situated in this district.

### **Facts Common to All Counts**

#### **A. The SIC Insurance Policies**

6. On around July 8, 1999, Red Oak Corporation ("Red Oak"), a Massachusetts corporation, by and through its insurance broker, Christopher & Regan Insurance, submitted a completed application for commercial general liability insurance (the "Application") to SIC.

7. Relying on the information in the Application, SIC issued policy number CLS0550782 to Red Oak for the policy period 07-28-99 to 07-28-00 with a limitation of liability of \$1 million per occurrence and \$2 million in the aggregate (the "Policy"). A true and accurate copy of the Policy is attached hereto as Exhibit A.

8. The Policy contains a Blanket Additional Insured Endorsement which amends the definition of an Insured. Specifically, the Policy states in relevant part:

WHO IS INSURED (SECTION II) is amended to include as an insured any person or organization (called additional insured) whom you are required to add as an additional insured on this policy under a written contract, agreement or permit which must be:

- a. currently in effect or becoming effective during the term of the policy; and
- b. executed prior to the "bodily injury," "property damage," "personal injury," or "advertising injury."

The insurance provided to this additional insured is limited as follows:

- a. premises you own, rent, lease or occupy; or
- b. your ongoing operations performed for that additional insured as specified in the written contract, agreement or permit.

. . .

Any coverage provided hereunder will be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a contract specifically requires that this insurance be primary.

When this insurance is excess, we will have no duty under Coverage A or B to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insureds.

. . .

**B. The Accident & Underlying Action**

9. On or around October 15, 1999, Canatal entered into a contract with Red Oak to perform certain construction work at the Marriott Crown Colony. A true and accurate copy of the contract between Canatal and Red Oak is attached hereto as Exhibit B.

10. The Canatal contract mandates that "Industries Canatal, Inc." is to be included as an additional insured on Red Oak's CGL insurance Policy. Id.

11. The contract does not require that Suffolk be included as an additional insured on the SIC Policy. Id.

12. Suffolk did not enter into a contract with Red Oak.

13. On or around May 11, 2000, Kevin Sheehan, an employee of Red Oak, sustained bodily injury as a result of an accident at the Marriott Crown Colony construction site.

14. In 2001, Kevin Sheehan and his wife, Deborah, filed a lawsuit captioned Sheehan v. Suffolk Construction Company, Inc. and East Coast Fire Proofing, Inc. v. Canatal Industries, Inc. and Red Oak Corporation, Suffolk County Superior Court Civil Action No. 01-0503F (the "Sheehan Action").

15. Suffolk made demand on SIC for defense and indemnification under the Policy.

16. SIC disclaimed coverage to Suffolk.

17. On or about March 26, 2002, Suffolk filed a lawsuit in Suffolk County Superior Court entitled Suffolk Construction Company, Inc. v. First State Management Group, Scottsdale Insurance Company and Gerling Canada, Suffolk Superior Court Civil Action No. 02-1338,

seeking defense and indemnity from SIC for the Sheehan Action. A true and accurate copy of the complaint is attached hereto as Exhibit C.

18. On May 22, 2002, Suffolk filed a Stipulation of Dismissal of its claims against SIC pursuant to Mass. R. Civ. P. Rule 41(a)(1). A true and accurate copy of the Stipulation of Dismissal is attached hereto as Exhibit D.

19. In the winter of 2004, Suffolk renewed its demand for SIC to provide a defense and indemnity for the Sheehan Action.

20. Around that same time, Canatal made demand on SIC to provide it with a defense and indemnity for the Sheehan Action.

**COUNT I**  
**(Declaratory Relief Pursuant to 28 U.S.C. §2201 Against Suffolk)**

21. SIC repeats the allegations set forth in paragraph 1 through 20 of the complaint and incorporates them herein by reference.

22. An actual controversy exists between SIC and Suffolk with respect to their respective rights and obligations under the Policy, as to which a declaratory judgment is necessary and appropriate.

23. The SIC Policy's Blanket Additional Insured Endorsement only obligates SIC to add a company as an Additional Insured to the Policy if that company entered into a written contract with Red Oak that required Red Oak to include the company as an additional insured. See Exhibit A.

24. Suffolk and Red Oak never entered into any contract.

25. The contract between Canatal and Red Oak did not require that Suffolk be included as an additional insured under the SIC Policy. See Exhibit A.

26. SIC is entitled to a declaration that it is not obligated to defend or indemnify Suffolk for any claims asserted by the Sheehan Action because Suffolk is not an additional insured.

**COUNT II**  
**(Declaratory Relief Pursuant to 28 U.S.C. §2201 Against Canatal)**

27. SIC repeats the allegations set forth in paragraph 1 through 26 of the complaint and incorporates same herein by reference.

28. An actual controversy exists between SIC and Canatal with respect to their respective rights and obligations under the Policy, as to which a declaratory judgment is necessary and appropriate.

29. Red Oak and Canatal entered into a contract on October 15, 1999 to perform certain construction work at the Marriott Crown Colony. See Exhibit B.

30. Red Oak agreed in the contract to include Canatal as an additional insured under its CGL Policy issued by SIC. Id.

31. SIC's policy's Blanket Additional Insured Endorsement provides that:

Any coverage provided hereunder will be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a contract specifically requires that this insurance be primary.

32. At all times relevant herein, Canatal maintained a CGL Policy with Gerling Canada. See a copy of Gerling Canada's Policy issued to Canatal attached hereto as Exhibit E.

33. Gerling Canada's policy contains an "other insurance" provision which states as follows:

This insurance is primary Insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this Insurance is primary and the Insured has other Insurance which is stated to be applicable to the loss on an excess or contingent basis

the amounts of the Insurer's liability under this Insurance shall not be reduced by the existence of such other Insurance.

34. SIC is entitled to a declaration that it is not obligated to defend Canatal in the Sheehan Action because any coverage afforded Canatal as an Additional Insured under the Policy is excess over the Gerling Canada policy.

35. SIC is entitled to a declaration that it has no obligation to indemnify Canatal until and unless Canatal is held liable in the Sheehan Action for damages in excess of the \$1 million policy limits of the Gerling Canada policy.

WHEREFORE, plaintiff Scottsdale Insurance Company respectfully request that the Court grant it the following relief:

1. Enter an order declaring that SIC is not obligated to defend or indemnify Suffolk Construction Company, Inc. under the Policy for any claims asserted in the Sheehan Action because Suffolk is not an Additional Insured;
2. Enter an order declaring that SIC is not obligated to defend Canatal under the Policy in the Sheehan Action;
3. Enter an order declaring that SIC is not obligated to indemnify Canatal until and unless Canatal is held liable in the Sheehan Action for damages in excess of the \$1 million policy limits of the Gerling Policy; and
4. Grant such other relief as the Court deems just and appropriate, including costs and attorneys fees incurred in this action.

SCOTTSDALE INSURANCE COMPANY  
Plaintiff

By its Attorneys:

A handwritten signature in dark ink, appearing to read "Elizabeth C. Sackett", is written over a horizontal line.

Barbara O'Donnell, Esq. (BBO#544458)

Elizabeth C. Sackett, Esq. (BBO#633649)

**Robinson & Cole LLP**

One Boston Place

Boston, MA 02108

(617) 557-5900

Dated: July 2, 2004



JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Scottsdale Insurance Company  
Arizona

## DEFENDANTS

Suffolk Construction Company, Inc. and  
Suffolk Industries, Inc.

(b) County of Residence of First Listed Plaintiff Scottsdale, Arizona  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Suffolk, MA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Barbara O'Donnell and Elizabeth C. Sackett  
Robinson & Cole LLP (2)  
One Boston Place, Boston, MA 02108  
(617) 557-5900

Attorneys (If Known)

John J. O'Brien  
O'Brien & VonRosenvinge, P.C. 11 Huntington Ave  
27 Mica Lane, 2nd Flr. Suite 1300  
Wellesley, MA 02481 Boston, MA 02199

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ DEF Incorporated or Principal Place of Business in This State ☐ 4 ☒ DEF  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☒ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☒ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Recovery of Defective Student Loans (Excl. Veterans) <input type="checkbox"/> 170 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 180 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 IIIA (1995P) <input type="checkbox"/> 862 Black Lung (92P) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Rep. portment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed. Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is a declaratory judgment action to resolve insurance coverage disputes.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
7/2/04

SIGNATURE OF ATTORNEY OF RECORD

*Elizabeth C. Sackett*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Scottsdale Insurance Company v. Suffolk Construction Co., Inc

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

    I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.    II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.\*Also complete AO 120 or AO 121  
for patent, trademark or copyright cases  X   III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.    IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.    V. 150, 152, 153.

04-11507 RGS

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒

NO

A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒Central Division ☐Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Barabara O'Donnell and Elizabeth SackettADDRESS Robinson & Cole  
One Boston Place  
Boston, MA 02108TELEPHONE NO. 617 557-5900